

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO **FILED**

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

JANIE MOLINA, and MANUEL MOLINA,
individually and as Parents and Next Friends of
MICHAEL MOLINA, a minor,

MAY 18 2004

Plaintiffs,

vs.

No. CIV. 02-140 WJ/LAM **CLERK**

JERRY D. McLAUGHLIN, II, M.D.,
LEA REGIONAL MEDICAL CENTER,
and JOSE SALGUERO, M.D.

Defendants.

REPORT AND RECOMMENDATION

THIS MATTER came before the Court on May 17, 2004 at 9:00 a.m. for the purpose of considering the approval of a proposed settlement benefitting a minor. Although I am not the assigned Magistrate Judge, I presided over this fairness hearing pursuant to the stipulation of the parties and counsel of record. At the hearing, the Court heard the testimony of the minor child's parents, Janie and Manuel Molina. The Court also received and considered the Report of the Guardian Ad Litem together with all of the comments of counsel present. I have attached hereto a copy of the attendance sheet, the Report of the Guardian Ad Litem and a confidential memo I received indicating the amount paid pursuant to the settlement agreement. I have not included a copy of the confidential memo indicating the amount of the settlement with the original of this report which is being filed of record as the parties have agreed to keep that information between themselves.

In this case, Plaintiffs' allege medical malpractice on the part of the defendants arising from the management of labor and delivery of Michael Molina on January 4-5, 2000. Please reference Section III in the Guardian Ad Litem's Report which provides a very thorough and detailed discussion of the underlying facts of the case.

The Court finds that the proposed settlement will result in the substantial sum being paid into trust for the minor child. The trust will be managed by an institutional trustee, Southwest Court Trust of Texas. Counsel and the parties are satisfied with Southwest's specialized ability to manage these trust funds and the parents understand that they will not be participating as trustees. I conclude and therefore find that counsel and the parties have made a sound decision relative to the placement of Michael's recovery proceeds with Southwest Court Trust of Texas. I have not reviewed nor was I presented with a copy of the trust documents, however it has been represented to me by counsel that Southwest Court Trust of Texas has the specialized ability to create these special needs trust.

At the hearing, Mr. Hart gave a very insightful view as to Michael's risk of recovery in the event the matter was to go to trial. I concluded after considering Mr. Hart's presentation that Plaintiffs were facing formidable defenses and that the decision to settle the case was prudent.

Therefore, having considered the pleadings on file in the above captioned cause, the testimony of Michael's parents, Janie and Manuel Molina, the Report and Recommendation of the Guardian Ad Litem as well as the comments and statements of counsel the undersigned concludes and does find that the settlement is fair, reasonable, and in the best interest of the minor child, Michael Molina.

IT IS THEREFORE RECOMMENDED that the Court approve the settlement. I have asked Mr. Gordon to prepare a form of Order of Dismissal with Prejudice for the Court's signature and he will do so and obtain approval by counsel within the next two-to three days.

Robert H. Scott

UNITED STATES MAGISTRATE

CONFERENCE ATTENDANCE SHEET

Case No. 02-0140 WJ/LAM

- () Scheduling Conference
 () Settlement Conference on _____
 (X) Other Fairness Hearing

PLEASE PRINT:

Your name

Your Status
(atty-party-other)With What Party
(ptf./deft.)GARY GORDONAtty.Dr. McLaughlinCARLA NEUSCHAttyLea Regional Medical CenterMichele EstradaAttyDr SalgueroRonald SegelAttyPlaintiffsMICHAEL HART* GALGAL~~Red Schwanter Plaintiffs~~ by telephone.Damon Richards